

An indictment is multiplicitous when it charges a single offense in several counts. United States v. Wilkinson, 124 F.3d 971, 975 (8th Cir. 1997). “[W]here the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not.” Blockburger v. United States, 284 U.S. 99, 304 (1932). The Blockburger test is met “notwithstanding a substantial overlap in the proof offered to establish the crimes.” Wilkinson, 124 F.3d at 975 (quoting Iannelli v. United States, 420 U.S. 770, 785 n.17 (1975)).

The Court will first address the conspiracy counts, as charged in Counts Two, Three, and Six of the Indictment. In Count Two, Defendant is charged with money laundering conspiracy to conceal and disguise the nature, location, ownership, and control of proceeds of specified unlawful activity in violation of 18 U.S.C. § 1956(h). In Count Three, Defendant is charged with conspiracy to use a communication facility to facilitate the distribution of a controlled substance in violation of 21 U.S.C. §§ 843(b) and 846. In Count Six, Defendant is charged with conspiracy to commit identity theft in violation of 18 U.S.C. §§ 1028(f), 1028(a)(7), and 1028(b)(3)(A).

After carefully reviewing the elements of these offenses, the Court concludes that Counts Two, Three, and Six are not multiplicitous with the drug conspiracy charged in Count One because the objects of the conspiracies are different, and thus each charged conspiracy requires proof of a fact which the other does not. See United States v. Eastman, 149 F.3d 802, 804 (8th Cir. 1998) (holding that the charge of conspiracy to distribute drugs requires proof “that a conspiracy existed to distribute drugs, and that [the defendant] knew of and intentionally joined the conspiracy,” while the charge of conspiracy to launder money requires proof that the defendant “knew of and intentionally joined a conspiracy to conduct financial transactions in which drug proceeds were used

with the intent of promoting the conspirators' illegal drug trafficking"); see also Albernaz v. United States, 450 U.S. 333, 339 (1981) (stating that it is "beyond peradventure" that a conspiracy to distribute marijuana in violation of 21 U.S.C. § 846 and a conspiracy to import marijuana in violation of 21 U.S.C. § 963 each requires proof of a fact that the other does not, because the statutory provisions "specify different ends as the proscribed object of the conspiracy").

Defendant also contends that Counts Four and Five, which charge him with possession with intent to distribute a controlled substance in violation of 21 U.S.C. § 841(a)(1), are multiplicitious with Count One because they are charged as overt acts of the drug conspiracy. However, it is well established that the same overt acts charged in a conspiracy count may also be charged and proved as substantive offenses, even though the substantive offense was within the time frame of the conspiracy, because the agreement to do the act is distinct from the act itself. United States v. Halls, 40 F.3d 275, 277 (8th Cir. 1994); see also Iannelli v. United States, 420 U.S. 770, 777 (1975) ("Traditionally the law has considered conspiracy and the completed substantive offense to be separate crimes."). Therefore, the Court concludes that Counts Four and Five, which charge underlying substantive drug offenses, are not multiplicitious with the drug conspiracy charged in Count One.

Based on the foregoing analysis, Defendant's Motion to Dismiss Counts Two through Six as Multiplicitious is **DENIED**.

IT IS SO ORDERED.

Dated this 27th day of May, 2009.

/s/ Ralph R. Erickson
Ralph R. Erickson, District Judge
United States District Court